

BOB ANTHONY
Commissioner

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Commissioner

DENISE A. BODE
Commissioner

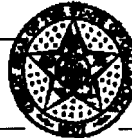
OKLAHOMA

Corporation Commission

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Office of General Counsel



Lawrence R. Edmison, General Counsel

September 29, 1997

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M. Street
Washington, D.C. 20554

RE: **CC Docket No. 94-129**

Dear Mr. Caton:

RECEIVED
SEP 29 1997
FCC MAIL ROOM

Please find enclosed an original and eleven (11) copies of the comments prepared by the Oklahoma Corporation Commission regarding the above-entitled docket. The Oklahoma Corporation Commission, having submitted these comments timely, requests that they be filed and made a part of the record in the above-entitled docket.

We have also forwarded a copy of the comments to the Federal Communication Commission's copy contractor, International Transcription Service, and a copy of the comments on computer diskette (WordPerfect 5.1, 3½ disk) to Ms. Cathy Seidel.

The Oklahoma Corporation Commission appreciates the opportunity to participate in this rulemaking. Any future correspondence concerning this rulemaking should be sent to:

Lenora Burdine
Assistant General Counsel
Oklahoma Corporation Commission
P.O. Box 52000-2000
Oklahoma City, OK 73152

Thank you for your cooperation.

Sincerely,

Maribeth D. Snapp
Maribeth D. Snapp
Deputy General Counsel

cc: International Transcription Service
Ms. Cathy Seidel

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DOCKET FILE COPY ORIGINAL
FCC 97-248

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

SEP 29 1997

In the Matter of)

FCC MAIL ROOM

Implementation of the Subscriber Carrier)
Selection Changes Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 94-129

Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)

**FURTHER NOTICE OF PROPOSED RULEMAKING AND
MEMORANDUM OPINION AND ORDER ON RECONSIDERATION**

Adopted: July 14, 1997

Released: July 15, 1997



**REPLY COMMENTS
OKLAHOMA CORPORATION COMMISSION**

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Submitted: September 29, 1997

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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CC MAIL ROOM

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Long Distance Carriers)

CC Docket No. 94-129

**REPLY COMMENTS OF THE
OKLAHOMA CORPORATION COMMISSION**

I. INTRODUCTION

1. On July 15, 1997, the Federal Communications Commission ("FCC") issued its Further Notice of Proposed Rulemaking ("FNPRM")¹ regarding proposed modifications to its rules regarding "slamming", in an effort to continue to protect consumers from unauthorized switching of preferred carriers and to implement provisions of the Telecommunications Act of 1996. Comments were filed on September 15, 1997 by numerous parties from all sectors of the industry, state regulatory agencies, consumer advocacy agencies, ILECs, IXCs, Resellers and trade associations.

2. The Oklahoma Corporation Commission ("OCC") hereby offers its reply comments. The OCC strongly supports the FCC's recognition that its present rules do not sufficiently protect consumers from the actions of telecommunications providers and its goal of strengthening safeguards against slamming. The need for the modifications of the current rules is evidenced by the increased number of complaints being received by the FCC.² State authorities with the responsibility to investigate slamming complaints noted in their

¹ FCC 97-248, CC Docket No. 94-129, Released July 15, 1997.

² In ¶ 6 of the FNPRM, the FCC notes that: "The Commission received 11,278 slamming complaints in 1995, a six-fold increase over the number of such complaints received in 1993. The number of slamming complaints received in 1996 is over 16,000."

comments to the FNPRM that they are experiencing a similar increase.³

3. The OCC's reply comments will be constrained by the fact that the OCC issued a Notice of Inquiry ("NOI") on September 16, 1997 seeking consideration of numerous issues related to slamming, the effect of competition in the telecommunications market and market abuses.⁴ Most of the issues in the FNPRM are addressed in the OCC's NOI. Therefore, the OCC cannot prejudice the outcome of the NOI proceeding pending before it. However, there are two areas regarding the FCC's anti-slamming efforts which were addressed by commenters to the FNPRM which the OCC believes should be addressed at this time: (1) the need for both state and federal requirements to address the problem of slamming; and, (2) the "Welcome Package" verification option. In addition, these reply comments will acknowledge a suggestion made by WorldCom that was not expressly addressed in the FNPRM.

II. Need for Both State and Federal Requirements

4. The OCC agrees with the comments made by the California Public Utilities Commission ("CPUC") which stated the belief that "the FCC and the states should continue to work together to tackle the ever-increasing scope and scale of slamming."⁵ Several states' comments cited recently enacted laws and regulations which set forth those states' specific requirements for addressing slamming. In recognition of the changing industry in the wake of the Telecommunications Act of 1996 ("Act"), these new requirements address applicability to both the long distance and local markets.⁶

5. Oklahoma also has recognized the evolving industry and the potential impact of slamming on consumers and competition in all segments of the telecommunications market. On March 7, 1996, the OCC approved rules which established the requirements

³ See the September 15, 1997 comments of, among others, the following: Public Staff-North Carolina Utilities Commission, p.8; Virginia State Corporation Commission Staff, p.1; Florida Public Service Commission, p.1; and, the Public Utility Commission of Texas, p.2.

⁴ See Appendix A, the OCC's Notice of Inquiry *In the Matter of the Notice of Inquiry of the Oklahoma Corporation Commission to Examine Rules, Procedures and Enforcement Actions Necessary to Protect Consumers from the Unauthorized Transfer (Slamming) of Customer Service*.

⁵ Comments of the People of the State of California and of the Public Utilities Commission of the State of California on the Further Notice of Proposed Rulemaking on Unauthorized Changes of Consumers' Long Distance Carriers, p.3.

⁶ *Id.*, p.5, Appendix B and Appendix C; Comments of the Public Utilities Commission of Texas, p.2 and Attachments.

for transferring an end-user to another telecommunications service provider and the penalties for any unauthorized transfer. These rules, attached as Appendix B to these comments, received final approval from the Governor and the Legislature on May 8, 1996 and became effective July 1, 1996. Oklahoma believes the adoption of these rules demonstrate the ability of the states to respond quickly to changes in the telecommunications market to provide an environment conducive to a competitive market, while addressing the potential market abuses.

6. Oklahoma disagrees with the "one-size-fits all" position advocated by some commenters. For instance, Excel expressed its concern that "state and (FCC) initiatives to regulate carrier selection procedures will result in a patchwork of inconsistent and sometimes conflicting carrier change regulations" and that "(O)nce the FCC's rules take effect, in states where different or inconsistent rules have been adopted, carriers will be governed by multiple sets of rules for the same services." Excel alleges that "the expense of compliance with as many as 51 varying sets of carrier change regulations will be prohibitive."⁷ Frontier suggested that "(W)hatever rules the (FCC) adopts, it should make crystal clear what is already implicit - namely, that it is prescribing uniform, nationwide rules from which the states are not permitted to deviate."⁸ Oklahoma disagrees with the approach that uniform nationwide rules are implicit in the Act.

7. A one-size-fits-all approach, recommended by some commenters, does not take into consideration the specific experiences in and concerns of individual states. Such an approach would, by its very nature, imply very broad requirements in order to accommodate the various practices in various areas or regions of the country. Oklahoma, instead, supports the suggestion of North Carolina that the FCC "should specify that its proposed rules are the minimum requirements with which carriers must comply and that the states may, if they chose, impose additional requirements on carriers in order to prevent unauthorized carrier changes."⁹ Additionally, Oklahoma supports the recommendation of the National Association of Attorney's General ("NAAG") that the FCC adopt "(A)n explicit expression of the (FCC's) intent not to preempt state measures that provide for similar or additional protections or state enforcement actions, as long as they do not conflict with Commission requirements..."¹⁰ and the Pennsylvania Office of Consumer Advocate's ("PaOCA") comment that "the FCC should recognize that the states may further strengthen slamming requirements." The PaOCA also asserts that the Act "appears to have recognized that states may also pass slamming remedies in addition to

⁷ Comments of Excel Communications, Inc., p.3.

⁸ Comments of Frontier Corporation, p.iii.

⁹ Initial Comments of the Public Staff - North Carolina Utilities Commission, p.12.

¹⁰ Comments of the National Association of Attorney's General, Consumer Protection Committee, Telecommunications Committee, p.13.

those put into affect by the FCC." It proposed that "(P)roviding greater penalties for the slamming violation, would not be at all inconsistent with the goals of the FCC."¹¹

9. Oklahoma believes that, instead of preempting a state's ability to address the slamming experiences of its citizens, the FCC should **not** deprive a state the opportunity to strengthen slamming requirements and penalties if it so elects.

III. "Welcome Package" Verification Option

10. The OCC strongly agrees with all the commenters who supported the FCC's tentative conclusion "that the 'welcome package' verification option should be eliminated."¹² During the process of granting a carrier a certificate of public convenience and necessity, the OCC reviews all of an applicant's proposed contact with potential customers, telemarketer scripts, third-party verification procedures and, where they were utilized, the contents of welcome packages. The OCC has previously required that applicant's remove the "negative option" verification and replace it with an "affirmative option" card, if one was contained in the package. The OCC's rules addressing verification state its preference for third-party verification.

11. The comments of the NAAG reflect the OCC's basis for requiring replacement of a negative option with an affirmative option on reply cards when it states "(A)lthough the procedure may sometimes be used as a post-sale verification method, it is often used when an initial telemarketer has not obtained authorization for a carrier change. Under this circumstance, a customer's failure to respond to the 'welcome package' is transformed into an invalid basis for the change." The NAAG further states, "As currently structured, this verification method is ineffective as it does not provide adequate notice to subscribers to constitute a post-sale confirmation. Because of the potential of abuse and the absence of a meaningful way to ensure that a 'welcome package' in fact confirms a prior order, this verification procedure should be eliminated."¹³

12. Several commenters address the potential for misinterpretation of what the package contains and the possibility that a customer may just discard the package without even opening it or that it may become lost in the mail. In fact, the PaOCA sums up all the comments by stating that "the failure to return a post card really indicates nothing about

¹¹ Comments of the Pennsylvania Office of Consumer Advocate, p.9.

¹² FNPRM, ¶¶16-18, 63,64.

¹³ Comments of the NAAG, p. 4-5.

the consumer's intent to change carriers."¹⁴

13. Two other commenters, WorldCom and Brittan apparently suggest additional restrictions on the use of welcome packages. "WorldCom agrees with the (FCC) that the 'welcome package', when used to confirm telemarketing orders without requiring affirmative written response by the consumer, can become a vehicle for unlawful marketing practices." However, WorldCom further suggests the use of welcome packages should not be prohibited where carriers desire to secure a written LOA from the consumer.¹⁵ Brittan believes that the welcome package verification method ... remains a viable verification option for marketing methods other than telemarketing but requests the FCC exclude the welcome package verification method for telemarketing sales.¹⁶ The OCC appreciates that WorldCom and Brittan support further restriction on the use of welcome packages.

14. This recognition of the deficiencies and possible misuse of welcome packages was not shared by all commenters. The OCC cannot agree with the comments of Excel, the rationale for which appears to ignore past experience. Excel's assertion that welcome packages containing negative-option cards constitute a timely written confirmation and provide the information necessary to question or reconsider an order belies that an affirmative-option would accomplish the same result.¹⁷

15. The OCC believes that the inclusion of the post card, as described in §64.1100(d)(7), as a verification option should be eliminated. The inherent drawbacks in such an option, the potential misunderstanding and/or misinterpretation by customers receiving it and misuse by carriers with its fallacy of consumer consent far outweigh any benefit which may be derived from its continued use. The benefits can more easily be provided though an affirmative confirmation.

IV. Reply Comment to Suggestion Made by Commenter

16. The OCC would also like to reply to a suggestion made by one commenter. WorldCom suggests further consideration of ways for subscribers to distinguish between a reseller of telecommunications service and the underlying carrier whose network is providing such service. Any perceived problem of this sort in the long distance market could very likely extend into the local exchange market as competition in that market

¹⁴ Comments of: PS-NCUC, p. 5; PaOCA, p. 6-7; PUCT, p.4; CPUC, p.8; FPSC, p.2-3.

¹⁵ Comments of WorldCom, Inc., p.ii,6-7.

¹⁶ Comments of Brittan Communications International Corporation, p.4-6

¹⁷ Comments of Excel Communications, Inc., p.6.

develops. WorldCom alleges that it has been wrongly associated with a slamming complaints because its CIC has been utilized to provide identification of other providers who have not been assigned their own CICs. Frontier alludes to similar experience. WorldCom offers the suggestion of the use of a "psuedo-CIC" as a possible solution. The OCC would support further investigation into this issue.

IV. CONCLUSION

17. The OCC's reply comments reflect its strongly-held belief that continued state and federal cooperation in eliminating the practice of slamming is vital. The FCC should not preempt the states' ability to establish their own rules. A state's rules can take into consideration the specific experience of that state, instead of adopting a one-size-fits-all approach. States should be free to promulgate rules that strengthen those adopted by the FCC; one size may not fit all.

18. The OCC has required the change of negative-option cards to affirmative-option ones, because it considers it decreases the opportunity for slamming. It emphatically supports the comments of a large number of commenters which concur with the FCC's tentative conclusion that the welcome package verification option be eliminated.